



January 30, 2004

HOUSE BILL No. 1437

DIGEST OF HB 1437 (Updated January 29, 2004 7:42 am - DI 105)

Citations Affected: IC 11-8; IC 11-10; IC 11-12; IC 12-23; IC 12-24; IC 35-38; IC 35-41; IC 35-50; IC 36-2.

Synopsis: Treatment of nonviolent drug offenders. Requires creation of a controlled substance rehabilitation program, which requires an individual who pleads guilty to or is convicted of a nonviolent crime that involves controlled substances to complete a controlled substance rehabilitative program instead of incarceration. Provides that a controlled substance rehabilitative program may be operated by a community corrections advisory board or a certified drug court. Requires the department of correction to determine the average daily cost of incarceration and the anticipated future costs of incarceration. Requires each county sheriff to provide the department of correction with the average daily cost of incarceration in a county jail. Repeals provisions concerning treatment, continuance of prosecution, and probation after felony charges and convictions of certain offenders.

Effective: July 1, 2004.

Crawford

January 20, 2004, read first time and referred to Committee on Courts and Criminal Code.
January 29, 2004, amended, reported — Do Pass.

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HB 1437—LS 6589/DI 107+



January 30, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1437

A BILL FOR AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-1-8.7 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]: **Sec. 8.7. "Forcible felony", for purposes of IC 11-12, has**
4 **the meaning set forth in IC 35-41-1-11.**

5 SECTION 2. IC 11-10-13 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2004]:

8 **Chapter 13. Costs of Incarceration**

9 **Sec. 1. The department shall develop a methodology for**
10 **determining the average daily cost of incarcerating an offender.**

11 **Sec. 2. The department shall determine the average daily cost of**
12 **incarcerating an offender in:**

13 (1) the department; and

14 (2) each county jail.

15 **Sec. 3. The department shall provide each court with**
16 **jurisdiction over felony and misdemeanor cases with a report**
17 **enumerating the average daily costs of incarcerating an offender.**

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1 **Sec. 4. (a) The department shall update the report described in**
 2 **section 3 of this chapter twice each calendar year. However, if the**
 3 **average daily cost of incarcerating an offender deviates less than**
 4 **one percent (1%) from the previous cost determination, the**
 5 **department is not required to update the report.**

6 **(b) The department shall update the report described in section**
 7 **3 of this chapter, if necessary, after receiving the semiannual**
 8 **incarceration cost analysis from each county sheriff under**
 9 **IC 36-2-13-5.**

10 **Sec. 5. The department may use the semiannual incarceration**
 11 **cost analysis of a county sheriff under IC 36-2-13-5 as the daily**
 12 **cost of incarcerating an offender in that county jail.**

13 **Sec. 6. (a) The department shall annually conduct or contract**
 14 **with a third party to annually conduct an actuarially based study**
 15 **of projected costs of incarceration.**

16 **(b) The study must:**

17 **(1) consider:**

18 **(A) the present and anticipated future costs of**
 19 **incarcerating the current inmate population;**

20 **(B) the effect of credit time;**

21 **(C) the effect of inmate mortality rates;**

22 **(D) the projected increase in costs of incarceration; and**

23 **(E) any other factor determined to be relevant by the**
 24 **department or the third party contractor; and**

25 **(2) provide an analysis of the projected costs of incarceration**
 26 **for each subsequent calendar year after the year the study is**
 27 **conducted until each inmate in the current inmate population**
 28 **is no longer serving the executed sentence for which the**
 29 **inmate is incarcerated in the department.**

30 **(c) Before July 1 of each year, the department shall provide the**
 31 **legislative council with the results of the study. The department**
 32 **shall provide the results in an electronic format under IC 5-14-6.**

33 **Sec. 7. The department may adopt rules under IC 4-22-2 to**
 34 **implement this chapter.**

35 **SECTION 3. IC 11-12-1-2 IS AMENDED TO READ AS**
 36 **FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Notwithstanding**
 37 **any other law, a county or any combination of counties may establish**
 38 **and operate a community corrections advisory board for the purpose of**
 39 **coordinating or operating community corrections programs. The**
 40 **county, in consultation with the advisory board, shall coordinate or**
 41 **operate community corrections programs for any of the following:**

42 **(1) The prevention of crime or delinquency.**

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(2) Persons sentenced to imprisonment in a county or local penal facility other than a state owned or operated facility.

(3) Committed offenders.

(4) Persons ordered to participate in community corrections programs as a condition of probation.

(b) Each county, by itself or in any combination of counties, shall establish and operate a community corrections advisory board to coordinate or operate community corrections programs for persons required to participate in a controlled substance rehabilitation program under IC 11-12-3.7. However, a county or a combination of counties is not required to establish and operate a community corrections advisory board if a controlled substance rehabilitation program is operated by the judge of a drug court as provided in IC 11-12-3.7-4.

SECTION 4. IC 11-12-3.5-1, AS ADDED BY P.L.224-2003, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. As used in this chapter, "forensic diversion program" means a program developed to ensure that an adult with a mental illness ~~or an addictive disorder~~ who has been convicted of a crime receives adequate community based treatment or other services instead of incarceration. An adult with a mental illness ~~or an addictive disorder~~ who has been convicted of a crime may participate in a forensic diversion program following the sentencing hearing, if the adult is:

- (1) participating in a community corrections program;
- (2) participating in a community transition program; or
- (3) on probation.

SECTION 5. IC 11-12-3.5-2, AS ADDED BY P.L.224-2003, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. The community corrections advisory board shall develop a forensic diversion program plan to do the following:

- (1) Establish and provide procedures for the early identification of serious mental ~~or addictive~~ disorders among detainees, including initial intake and assessment programs for individuals who are arrested.
- (2) Permit an individual who is not charged with a crime involving serious bodily injury to participate in an arraignment or postarraignment diversion program.
- (3) Provide a program of community based services for an individual eligible for deferred prosecution under IC 33-14-1-7 or IC 12-23-5-7.

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(4) Permit an individual participating in a forensic diversion program to discontinue participation sixty (60) days after the individual's primary caregiver, physician, or counselor has released the individual from all care except for basic monitoring.

SECTION 6. IC 11-12-3.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 3.7. Controlled Substance Rehabilitation Program

Sec. 1. As used in this chapter, "controlled substance rehabilitation program" means a program developed to ensure that an individual with a substance abuse addiction who:

- (1) pleads guilty to a charge; or**
- (2) is convicted of a crime;**

that involves controlled substances (as defined in IC 35-48-1-9) receives treatment for the addiction instead of incarceration.

Sec. 2. (a) Except as provided in subsection (b), an individual with a substance abuse addiction who pleads guilty to a charge or is convicted of a crime that involves controlled substances shall participate in a controlled substance rehabilitation program following the sentencing hearing as a condition of probation.

(b) An individual with a substance abuse addiction is not eligible for a controlled substance rehabilitation program if:

- (1) the individual is charged with or convicted of:**
 - (A) a forcible felony; or**
 - (B) a burglary classified as a Class A or Class B felony; or**
- (2) the individual has a record that includes at least two (2) prior convictions for:**
 - (A) forcible felonies; or**
 - (B) a burglary classified as a Class A or Class B felony.**

(c) If an individual described in subsection (a) does not complete a controlled substance rehabilitation program or is convicted of another crime while undergoing treatment in a controlled substance rehabilitation program, a court shall:

- (1) sentence the individual, if the individual pleaded guilty to the crime; or**
- (2) revoke or modify the individual's probation, if the completion of a controlled substance rehabilitation program was a condition of the individual's probation.**

(d) A court shall advise an individual who is ordered into a controlled substance rehabilitation program that:

- (1) the individual may be placed under the supervision of a controlled substance rehabilitation program for a period not**

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to exceed two (2) years; or

(2) during treatment, the individual may be confined in an institution or, at the discretion of the controlled substance rehabilitation program, the individual may be released for treatment or supervised in the community.

(e) The court may request a controlled substance rehabilitation program to examine and evaluate an individual to determine whether the individual is a drug abuser or an alcoholic and is likely to be rehabilitated through treatment. If the controlled substance rehabilitation program determines that an individual will not likely be rehabilitated through treatment, the individual is not eligible to participate in the controlled substance rehabilitation program.

(f) A court may require progress reports on an individual who is ordered by the court to undergo treatment in a controlled substance rehabilitation program.

Sec. 3. Each community corrections advisory board established for one (1) or more counties under IC 11-12-1-2 or the judge of a drug court who is authorized to operate a controlled substance rehabilitation program under section 4 of this chapter shall develop a controlled substance rehabilitation program to do the following:

(1) Establish and provide procedures for the early identification of substance abuse addictions among detainees, including initial intake and assessment programs for individuals who are arrested.

(2) Permit an individual who is not charged with a crime involving serious bodily injury to participate in a controlled substance rehabilitation program.

(3) Establish a comprehensive program to treat substance abuse addictions.

(4) Encourage addiction treatment services based on best practices and current research.

(5) Establish processes that provide for flexible, individualized, and coordinated service planning for program participants.

Sec. 4. A controlled substance rehabilitation program:

(1) must be certified by the division of mental health and addiction or the Indiana judicial center; and

(2) may be operated by the community correction advisory board, the judge of a drug court certified under IC 12-23-14.5, or a private contractor.

The Indiana judicial center may adopt rules to implement this

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section.

Sec. 5. A controlled substance rehabilitation program must provide the following services:

- (1) Screening for eligibility and other appropriate services.
- (2) Clinical assessment.
- (3) Education.
- (4) Referral.
- (5) Service coordination and case management.
- (6) Emergency.
- (7) Detoxification.
- (8) Counseling.
- (9) Rehabilitative care.

Sec. 6. (a) As used in this section, "fund" means the controlled substance rehabilitation program fund established by subsection (b).

(b) The controlled substance rehabilitation program fund is established to administer and carry out the purposes of this chapter. The department shall administer the fund.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) The treasurer of state shall invest money in the fund in the same manner as other public money may be invested.

(e) Money in the fund at the end of the state fiscal year does not revert to the state general fund.

(f) The fund consists of:

- (1) amounts appropriated by the general assembly; and
- (2) donations, grants, and money received from any other source.

(g) The department shall adopt rules governing the disbursement of funds to:

- (1) a county; or
- (2) the Indiana judicial center drug fund if a drug court operates a controlled substance rehabilitation program;

that complies with the provisions of this chapter.

(h) There is annually appropriated to the department from the fund an amount sufficient to carry out the purposes of this chapter.

SECTION 7. IC 12-23-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) This article does not repeal or modify Indiana law relating to the operation of a vehicle under the influence of liquor or drugs.

(b) IC 12-23-5 ~~IC 12-23-6~~, ~~IC 12-23-7~~, ~~IC 12-23-8~~, and any other related provisions of this article shall be considered to be alternative

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methods or procedures for the prosecution of alcoholics or drug abusers as criminals.

SECTION 8. IC 12-23-5-1, AS AMENDED BY P.L.224-2003, SECTION 125, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) In a criminal proceeding for a misdemeanor or infraction in which:

(1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or

(2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court may take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

(b) For purposes of IC 11-12-3.5, in a criminal proceeding in which:

(1) the use or abuse of alcohol ~~drugs~~, or harmful substances is a contributing factor or a material element of the offense; or

(2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court shall take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

SECTION 9. IC 12-23-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. If a defendant is convicted in a proceeding described in section 1 of this chapter and the court places the defendant on probation, the court may do the following:

(1) Refer the defendant to an alcohol ~~and drug services~~ treatment program if the court makes a determination under section ~~1(1)~~ **1(a)(1)** of this chapter.

(2) Refer the defendant to an appropriate therapy program if the court makes a determination under section ~~1(2)~~ **1(a)(2)** of this chapter.

(3) Require the defendant to undergo treatment as a condition of probation.

SECTION 10. IC 12-23-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) An individual who by medical examination is found to be incapacitated by alcohol at the time of admission or to have become incapacitated by alcohol at any time after admission may not be detained at a facility:

(1) after the individual is no longer incapacitated by alcohol; or

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(2) if the individual remains incapacitated by alcohol for more than forty-eight (48) hours after admission as a patient. ~~unless the individual is committed under IC 12-23-7 through IC 12-23-8.~~

(b) An individual may consent to remain in a facility as long as the physician in charge believes it is appropriate.

SECTION 11. IC 12-24-12-10, AS AMENDED BY P.L.215-2001, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) Upon admission to a state institution administered by the division of mental health and addiction, the gatekeeper is one (1) of the following:

(1) For an individual with a psychiatric disorder, the community mental health center that submitted the report to the committing court under IC 12-26.

(2) For an individual with a developmental disability, a division of disability, aging, and rehabilitative services service coordinator under IC 12-11-2.1.

(3) For an individual entering an addictions program, an addictions treatment provider that is certified by the division of mental health and addiction.

(b) The division is the gatekeeper for the following:

(1) An individual who is found to have insufficient comprehension to stand trial under IC 35-36-3.

(2) An individual who is found to be not guilty by reason of insanity under IC 35-36-2-4 and is subject to a civil commitment under IC 12-26.

(3) An individual who is immediately subject to a civil commitment upon the individual's release from incarceration in a facility administered by the department of correction or the Federal Bureau of Prisons, or upon being charged with or convicted of a forcible felony under IC 35-41-1.

~~(4) An individual placed under the supervision of the division for addictions treatment under IC 12-23-7 and IC 12-23-8.~~

~~(5)~~ (4) An individual transferred from the department of correction under IC 11-10-4.

SECTION 12. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) When the defendant appears for sentencing, the court shall inform ~~him~~ **the defendant** of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in ~~his~~ **the defendant's** own behalf and, before pronouncing sentence, the court shall ask ~~him~~ **the defendant** whether ~~he~~ **the**

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1 **defendant** wishes to make such a statement. Sentence shall then be
 2 pronounced, unless a sufficient cause is alleged or appears to the court
 3 for delay in sentencing.

4 **(b) A court that sentences a person to a term of imprisonment**
 5 **shall include the total costs of incarceration in the sentencing**
 6 **order. The court may not consider Class I credit under**
 7 **IC 35-50-6-3 in the calculation of the total costs of incarceration.**

8 SECTION 13. IC 35-38-2-2.3, AS AMENDED BY P.L.2-2003,
 9 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2004]: Sec. 2.3. (a) As a condition of probation, the court may
 11 require a person to do a combination of the following:

12 (1) Work faithfully at suitable employment or faithfully pursue a
 13 course of study or vocational training that will equip the person
 14 for suitable employment.

15 (2) Undergo available medical or psychiatric treatment and
 16 remain in a specified institution if required for that purpose.

17 (3) Attend or reside in a facility established for the instruction,
 18 recreation, or residence of persons on probation.

19 (4) Support the person's dependents and meet other family
 20 responsibilities.

21 (5) Make restitution or reparation to the victim of the crime for
 22 damage or injury that was sustained by the victim. When
 23 restitution or reparation is a condition of probation, the court shall
 24 fix the amount, which may not exceed an amount the person can
 25 or will be able to pay, and shall fix the manner of performance.

26 (6) Execute a repayment agreement with the appropriate
 27 governmental entity to repay the full amount of public relief or
 28 assistance wrongfully received, and make repayments according
 29 to a repayment schedule set out in the agreement.

30 (7) Pay a fine authorized by IC 35-50.

31 (8) Refrain from possessing a firearm or other deadly weapon
 32 unless granted written permission by the court or the person's
 33 probation officer.

34 (9) Report to a probation officer at reasonable times as directed
 35 by the court or the probation officer.

36 (10) Permit the person's probation officer to visit the person at
 37 reasonable times at the person's home or elsewhere.

38 (11) Remain within the jurisdiction of the court, unless granted
 39 permission to leave by the court or by the person's probation
 40 officer.

41 (12) Answer all reasonable inquiries by the court or the person's
 42 probation officer and promptly notify the court or probation

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officer of any change in address or employment.

(13) Perform uncompensated work that benefits the community.

(14) Satisfy other conditions reasonably related to the person's rehabilitation.

(15) Undergo home detention under IC 35-38-2.5.

(16) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:

(A) the person had been convicted of a sex crime listed in IC 35-38-1-7.1(e) and the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) as described in IC 35-38-1-7.1(b)(8); or

(B) the person had been convicted of an offense related to a controlled substance listed in IC 35-38-1-7.1(f) and the offense involved the conditions described in IC 35-38-1-7.1(b)(9)(A).

(17) Refrain from any direct or indirect contact with an individual.

(18) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(19) Periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is

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required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Successfully complete a controlled substance rehabilitation program under IC 11-12-3.7.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(17):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 14. IC 35-41-1-26.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26.8. "Total costs of**

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1 **incarceration" means the average daily cost of incarcerating an**
 2 **offender, as described in IC 11-10-13, multiplied by the number of**
 3 **days the offender is sentenced to a term of imprisonment.**

4 SECTION 15. IC 35-50-3-1, AS AMENDED BY P.L.1-2002,
 5 SECTION 152, IS AMENDED TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) The court may suspend any
 7 part of a sentence for a misdemeanor.

8 (b) Except as provided in subsection (c), whenever the court
 9 suspends in whole or in part a sentence for a Class A, Class B, or Class
 10 C misdemeanor, it may place the person on probation under IC 35-38-2
 11 for a fixed period of not more than one (1) year, notwithstanding the
 12 maximum term of imprisonment for the misdemeanor set forth in
 13 sections 2 through 4 of this chapter. However, the combined term of
 14 imprisonment and probation for a misdemeanor may not exceed one (1)
 15 year.

16 (c) Whenever the court suspends a sentence for a misdemeanor, if
 17 the court finds that the use or abuse of alcohol, drugs, or harmful
 18 substances is a contributing factor or a material element of the offense,
 19 the court ~~may~~ **shall** place the person on probation under IC 35-38-2
 20 **and in a controlled substance rehabilitation program under**
 21 **IC 11-12-3.7** for a fixed period of not more than two (2) years.
 22 However, a court may not place a person on probation for a period of
 23 more than twelve (12) months in the absence of a report that
 24 substantiates the need for a period of probation that is longer than
 25 twelve (12) months for the purpose of completing a course of substance
 26 abuse treatment. A probation user's fee that exceeds fifty percent (50%)
 27 of the maximum probation user's fee allowed under IC 35-38-2-1 may
 28 not be required beyond the first twelve (12) months of probation.

29 SECTION 16. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,
 30 SECTION 126, IS AMENDED TO READ AS FOLLOWS
 31 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any
 32 part of a sentence for a felony, except as provided in this section or in
 33 section 2.1 of this chapter.

34 (b) With respect to the following crimes listed in this subsection, the
 35 court may suspend only that part of the sentence that is in excess of the
 36 minimum sentence, unless the court has approved placement of the
 37 offender in a forensic diversion program under IC 11-12-3.5 **or in a**
 38 **controlled substance rehabilitation program under IC 11-12-3.7:**

39 (1) The crime committed was a Class A or Class B felony and the
 40 person has a prior unrelated felony conviction.

41 (2) The crime committed was a Class C felony and less than seven

42 (7) years have elapsed between the date the person was

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1 discharged from probation, imprisonment, or parole, whichever
 2 is later, for a prior unrelated felony conviction and the date the
 3 person committed the Class C felony for which the person is
 4 being sentenced.

5 (3) The crime committed was a Class D felony and less than three
 6 (3) years have elapsed between the date the person was
 7 discharged from probation, imprisonment, or parole, whichever
 8 is later, for a prior unrelated felony conviction and the date the
 9 person committed the Class D felony for which the person is
 10 being sentenced. However, the court may suspend the minimum
 11 sentence for the crime only if the court orders home detention
 12 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 13 sentence specified for the crime under this chapter.

14 (4) The felony committed was:

15 (A) murder (IC 35-42-1-1);

16 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
 17 causing death;

18 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

19 (D) kidnapping (IC 35-42-3-2);

20 (E) confinement (IC 35-42-3-3) with a deadly weapon;

21 (F) rape (IC 35-42-4-1) as a Class A felony;

22 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 23 felony;

24 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 25 felony;

26 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 27 with a deadly weapon;

28 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 29 injury;

30 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 31 or with a deadly weapon;

32 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 33 weapon;

34 (M) escape (IC 35-44-3-5) with a deadly weapon;

35 (N) rioting (IC 35-45-1-2) with a deadly weapon;

36 (O) dealing in cocaine, a narcotic drug, or methamphetamine
 37 (IC 35-48-4-1) if the court finds the person possessed a firearm
 38 (as defined in IC 35-47-1-5) at the time of the offense, or the
 39 person delivered or intended to deliver to a person under
 40 eighteen (18) years of age at least three (3) years junior to the
 41 person and was on a school bus or within one thousand (1,000)
 42 feet of:

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- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; or

(R) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 17. IC 36-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The sheriff shall:

- (1) arrest without process persons who commit an offense within

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1 ~~his~~ **the sheriff's** view, take them before a court of the county
 2 having jurisdiction, and detain them in custody until the cause of
 3 the arrest has been investigated;

4 (2) suppress breaches of the peace, calling the power of the
 5 county to ~~his~~ **the sheriff's** aid if necessary;

6 (3) pursue and jail felons;

7 (4) execute all process directed to ~~him~~ **the sheriff** by legal
 8 authority;

9 (5) serve all process directed to ~~him~~ **the sheriff** from a court or
 10 the county executive;

11 (6) attend and preserve order in all courts of the county;

12 (7) take care of the county jail and the prisoners there; ~~and~~

13 (8) take photographs, fingerprints, and other identification data as
 14 ~~he~~ **the sheriff** shall prescribe of persons taken into custody for
 15 felonies or misdemeanors; **and**

16 **(9) on or before January 31 and June 30 of each year, provide**
 17 **to the department of correction the average daily cost of**
 18 **incarcerating a prisoner in the county jail as determined**
 19 **under the methodology developed by the department of**
 20 **correction under IC 11-10-13.**

21 (b) A person who:

22 (1) refuses to be photographed;

23 (2) refuses to be fingerprinted;

24 (3) withholds information; or

25 (4) gives false information;

26 as prescribed in subsection (a)(8), commits a Class C misdemeanor.

27 **SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE**
 28 **JULY 1, 2004]: IC 12-23-6; IC 12-23-7; 12-23-8.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1437, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 11-10-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 13. Costs of Incarceration

Sec. 1. The department shall develop a methodology for determining the average daily cost of incarcerating an offender.

Sec. 2. The department shall determine the average daily cost of incarcerating an offender in:

- (1) the department; and**
- (2) each county jail.**

Sec. 3. The department shall provide each court with jurisdiction over felony and misdemeanor cases with a report enumerating the average daily costs of incarcerating an offender.

Sec. 4. (a) The department shall update the report described in section 3 of this chapter twice each calendar year. However, if the average daily cost of incarcerating an offender deviates less than one percent (1%) from the previous cost determination, the department is not required to update the report.

(b) The department shall update the report described in section 3 of this chapter, if necessary, after receiving the semiannual incarceration cost analysis from each county sheriff under IC 36-2-13-5.

Sec. 5. The department may use the semiannual incarceration cost analysis of a county sheriff under IC 36-2-13-5 as the daily cost of incarcerating an offender in that county jail.

Sec. 6. (a) The department shall annually conduct or contract with a third party to annually conduct an actuarially based study of projected costs of incarceration.

(b) The study must:

(1) consider:

- (A) the present and anticipated future costs of incarcerating the current inmate population;**
- (B) the effect of credit time;**
- (C) the effect of inmate mortality rates;**
- (D) the projected increase in costs of incarceration; and**
- (E) any other factor determined to be relevant by the**

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department or the third party contractor; and

(2) provide an analysis of the projected costs of incarceration for each subsequent calendar year after the year the study is conducted until each inmate in the current inmate population is no longer serving the executed sentence for which the inmate is incarcerated in the department.

(c) Before July 1 of each year, the department shall provide the legislative council with the results of the study. The department shall provide the results in an electronic format under IC 5-14-6.

Sec. 7. The department may adopt rules under IC 4-22-2 to implement this chapter."

Page 2, line 5, after "IC 11-12-3.7." insert "**However, a county or a combination of counties is not required to establish and operate a community corrections advisory board if a controlled substance rehabilitation program is operated by the judge of a drug court as provided in IC 11-12-3.7-4.**".

Page 3, line 16, after ";" insert "**or**".

Page 3, line 20, delete ";" and insert ".".

Page 3, delete lines 21 through 31.

Page 4, line 19, after "IC 11-12-1-2" insert "**or the judge of a drug court who is authorized to operate a controlled substance rehabilitation program under section 4 of this chapter**".

Page 4, line 37, after "addiction" delete ";" and insert "**or the Indiana judicial center;**".

Page 4, line 39, after "board" insert "**, the judge of a drug court certified under IC 12-23-14.5,**".

Page 4, between lines 39 and 40, begin a new line blocked left and insert "**The Indiana judicial center may adopt rules to implement this section.**".

Page 5, line 26, after "to" insert ":

(1)".

Page 5, line 26, after "county" insert "**; or**

(2) the Indiana judicial center drug fund if a drug court operates a controlled substance rehabilitation program;".

Page 5, line 26, beginning with "that", begin a new line blocked left.

Page 7, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 12. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) When the defendant appears for sentencing, the court shall inform ~~him~~ **the defendant** of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement

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personally in ~~his~~ **the defendant's** own behalf and, before pronouncing sentence, the court shall ask ~~him~~ **the defendant** whether ~~he~~ **the defendant** wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration."

Page 10, between lines 17 and 18, begin a new paragraph and insert:

"SECTION 14. IC 35-41-1-26.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26.8. "Total costs of incarceration" means the average daily cost of incarcerating an offender, as described in IC 11-10-13, multiplied by the number of days the offender is sentenced to a term of imprisonment."**

Page 13, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 17. IC 36-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The sheriff shall:

- (1) arrest without process persons who commit an offense within ~~his~~ **the sheriff's** view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (2) suppress breaches of the peace, calling the power of the county to ~~his~~ **the sheriff's** aid if necessary;
- (3) pursue and jail felons;
- (4) execute all process directed to ~~him~~ **the sheriff** by legal authority;
- (5) serve all process directed to ~~him~~ **the sheriff** from a court or the county executive;
- (6) attend and preserve order in all courts of the county;
- (7) take care of the county jail and the prisoners there; ~~and~~
- (8) take photographs, fingerprints, and other identification data as ~~he~~ **the sheriff** shall prescribe of persons taken into custody for felonies or misdemeanors; **and**
- (9) on or before January 31 and June 30 of each year, provide to the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.**

(b) A person who:

- (1) refuses to be photographed;

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(2) refuses to be fingerprinted;
(3) withholds information; or
(4) gives false information;
as prescribed in subsection (a)(8), commits a Class C misdemeanor."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1437 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 0.

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